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Opinion No. 64-17-L
R-95
April 9, 1964

REQUESTED BY: THE HONORABLE SOL AHEE
State Senator

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: 1. Was the adoption of Rule XV(A) of the rules and regulations of the Arizona State Board of Cosmetology which requires one year employment in Arizona as a licensed cosmetologist within the authority of the Board of Cosmetology ?

2. In a school of cosmetology what ratio of students to instructors must be maintained ? In what, if any, circumstances may a deviation from this ratio be permitted ?

ANSWERS: 1. Yes. See body of opinion.

2. See body of opinion.

Rule XV sets forth the requirements for admission of an applicant in a school of cosmetology as a student instructor.

Rule XV(A)(1) is that portion of the rule which is presently under consideration and reads as follows:

"Present proof of one year's work experience in Arizona."

The adoption of this rule (XV(A)(1)) was based upon A.R.S. §32-524. Pertinent portions of this statute are quoted below.

"§32-524. Instructor; student instructor; qualifications of applicant.

"A. A person is entitled to receive a license to instruct in a school of cosmetology who possesses the following qualifications:

1. Is the holder of a license as a cosmetologist issued by the state and has practiced

as such for not less than one year.

* * *

(D) A person following a course of training for an instructor's license is entitled to assist a licensed instructor in the instruction of other students in the school and shall be known as a student instructor."

In enacting A.R.S. §32-524, the Legislature intended to establish an orderly, logical procedure an individual might follow in attempting to acquire a license as an instructor of cosmetology. The first step in this procedure obviously is to qualify as a student instructor. In this regard A.R.S. §32-524 was passed and entitled "INSTRUCTOR: STUDENT INSTRUCTOR: QUALIFICATION OF APPLICANT."

It is apparent the qualifications referred to in the title are those qualifications necessary to become a student instructor. The first such qualification to acquire the status as a student instructor is that the applicant be a "holder of a license as a cosmetologist issued by this state and have practiced as such for not less than one year." Rule XV(A)(1) adopted by the Arizona Board of Cosmetology was adopted for the purpose of determining if the applicant possessed the necessary qualifications to qualify as a student instructor, a level of professional competency above that of a student cosmetologist or cosmetologist with less than one year's working experience in Arizona.

Additional support of this interpretation is found in A.R.S. §32-524(D), above quoted. This portion of the statute governing student instructors and their qualifications grants the student instructor the right to assist licensed instructors in the instruction of other students. It would seem the right to assist licensed instructors is a right given only if the student instructor has demonstrated a certain minimum knowledge and proficiency as evidenced by one year of licensed employment in this state as a working cosmetologist.

It is, therefore, the opinion of this office that an applicant for status as a student instructor must first present evidence of

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of one year employment in the State of Arizona as a licensed cosmetologist. Rule XV (A)(1) as adopted by the Board of Cosmetology is a valid implementation of A.R.S. §32-524(A)(1).

In answering question no. 2 the purpose of enacting A.R.S. §32-527 must be considered. The pertinent portions of this statute are as quoted below.

"Licensing of Cosmetology School.

"A. The school of cosmetology is entitled to receive a license to operate as such and to teach cosmetology, manicuring and finger waving, if it fulfills and maintains the following requirements.

* * *

"C. Schools having a registered student body enrollment up to twenty students shall provide one licensed instructor and for each additional twenty students enrolled, or any fraction thereof, the school shall provide one additional instructor."

It is the opinion of this office that the Legislature intended a student of cosmetology be assured a certain minimum amount of personalized instruction while a student developing the skills of a licensed cosmetologist. This we believe was the purpose in enacting A.R.S. §32-527(C) which established the requirement of one licensed instructor for each twenty students registered in the school of cosmetology. The spirit of the law, then, in this regard, guarantees such personalized instruction to a student of cosmetology. What the precise factual situation is, which would give rise to a breach of purpose, intent and spirit of this requirement, is a question that could only be determined by appropriate litigation: It is a fact question, and as such is not amenable to a legal opinion. This office is of the opinion that prior to such litigation the Board of Cosmetology has a right to make such a determination. It would be a proper administrative decision within the discretion of the Board of Cosmetology.

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